Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1206

BRUCE A. LATSHAW,

Petitioner

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent

BRIEF IN OPPOSITION

TO

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

Robert A. Mix, Esquire
Assistant District Attorney
Centre County Courthouse
Bellefonte, Penna. 16823

(Counsel for Respondent)

TABLE OF CITATIONS

REASONS FOR DENYING THE WRIT

Petitioner seeks a review on a writ of certiorari to the Supreme Court of Pennsylvania to determine whether that Court improperly interpreted the scope of the Fourth Amendment as it pertains to Petitioner's reasonable expectations of privacy as to the contents of two footlockers and containers stored on premises owned by a third party. Petitioner contends that the decision of the Supreme Court of Pennsylvania is not in accord with the recent decision of United States v. Chadwick, 433 U.S. 1, 53 L.Ed.2d 538, 97 S.Ct. 2476 (1977), wherein this Court ruled improper the non-consentual warrantless search of a locked footlocker seized at the time of arrest of those in possession thereof. This Court's decision rested upon a finding that under the facts and circumstances of Chadwick, the respondents manifested a reasonable expectation of privacy in the contents of the locked footlocker and, therefore, a warrantless search thereof was improper.

Beginning with Katz v. United States, 389 U.S. 347, 19 L.Ed.2d 576, 88 S.Ct. 507 (1967), this Court has consistently recognized that the Fourth Amendment protects people not property. The scope of the Fourth

Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place. See id., at 353, 19 L.Ed.2d 576, 88 S.Ct. 507. To establish a legitimate expectation of privacy, as pointed out in the concurring opinion of Mr. Justice Harlan, "it is not enough than an individual desired or anticipated that he would be free from governmental intrusion. Rather, for an expectation to deserve the protection of the Fourth Amendment, it must 'be one that society is prepared to recognize as reasonable.'" See id., at 361 19 L.Ed.2d 576, 88 S.Ct. 507.

This formulation necessarily gives rise to an individualized approach in determining whether a legitimate expectation of privacy exists. "The ultimate question, therefore, is whether one's claim to privacy from governmental intrusion is reasonable in light of all the surrounding circumstances." Rakas v. Illinois, ____ U.S. ____, 58 L.Ed.2d at 406, 99 S.Ct. ____ (1978)(Concurring opinion of Mr. Justice Powell, with whom the Chief Justice joined.)

Petitioner cites United States v. Chadwick, supra, as determinative of his expectation of privacy

as to the contents of the items searched for and seized and, consequently, the invalidity of a warrantless search and seizure thereto. While Chadwick held that an individual may have a legitimate expectation of privacy as to the contents of a locked footlocker in his possession at the time of arrest, the case at bar is sufficiently distinguishable factually as to justify a different result.

The decision of the Supreme Court of Pennsylvania distinguishes Chadwick in the context of the third party consent exception to the warrant requirement recognized by this Court in United States v. Matlock, 415 U.S. 164, 39 L.Ed.2d 242, 94 S.Ct. 988 (1974). In the case at bar Petitioner had stored the containers and footlockers subsequently searched for and seized in the hayloft of a barn owned by Minnie Bubb, a person with whom he had no express or implied understanding with respect to the storage or protection of said items and who retained absolute control over the premises. In line with the reasoning of Matlock, it was reasonable for Petitioner to recognize that others having joint access or control over the premises might permit an inspection in his own right and, thus, Petitioner assumed the risk thereof. Although Petitioner may have had a

subjective expectation of privacy, that expectation was not a reasonable one.

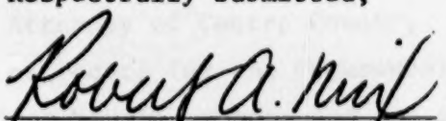
Although not discussed in detail, the Supreme Court of Pennsylvania also stated that its decision in the case at bar would be justified by the theory suggested in United States v. Diggs, 544 F.2d 116 (3rd Cir. 1976) and United States v. Botsch, 364 F.2d 542 (2nd Cir. 1966). There, a search authorized by a third party, who had a legitimate interest in exculpating himself or herself from possible criminal involvement with the suspected contraband, was found not to be an unreasonable search under the Fourth Amendment. In the case at bar Minnie Bubb requested the police to open and examine closed containers located on her property which she believed contained a controlled substance, said containers having been placed there without her knowledge or consent.

The facts and circumstances of the case at bar are sufficiently distinguishable from those of Chadwick, so as to justify the conclusion of the Supreme Court of Pennsylvania, under either of the theories advances, that Petitioner did not have a reasonable expectation of privacy in the contents of the containers and footlockers searched for and seized. Therefore, a warrantless search was justified under the third party consent exception to the warrant requirement.

CONCLUSION

For the foregoing reasons, the Supreme Court of Pennsylvania has not decided a Fourth Amendment question of substance in a way not in accord with applicable decisions of this Court. The Petition for Writ of Certiorari should, therefore, be denied.

Respectfully submitted,



Robert A. Mix, Esquire
Assistant District Attorney

(Counsel for Respondent)

COMMONWEALTH OF PENNSYLVANIA, Respondent	:	IN THE SUPREME COURT OF THE UNITED STATES
v.	:	
BRUCE A. LATSHAW, Petitioner	:	No. 78-1206

PROOF OF SERVICE

I, Robert A. Mix, Esquire, an attorney in the Officer of the District Attorney of Centre County, Pennsylvania, attorneys of record for the Commonwealth of Pennsylvania, Respondent herein, depose and say that on the sixth day of April, 1979, I served a copy of the foregoing Respondent's Brief in Opposition on Stanford Schmuckler, Esquire, counsel of record for Petitioner, by depositing the same, addressed to him, in a United States Post Office, with first class postage prepaid.

All parties required to be served have been served.

Robert A. Mix

Robert A. Mix, Esquire
Assistant District Attorney

SWORN TO AND SUBSCRIBED BEFORE
ME THIS SIXTH DAY OF APRIL, 1979.

Ruth E. Ruby

PROTHONOTARY
My Commission Expires First Monday in 1980